IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION (MAIN) NO. 280 OF 2006

SHRI ONOFIO D'COSTA, CAVELOSSIM, SALCETE, GOA. ....Appellant

Versus

SHRI ARUN NAIK, MAPUSA, GOA. ....Respondent

Mr. S. G. Bhobe, Advocate for the Applicant.

Coram:- N. A. BRITTO, J.

Date:- 31st August, 2006

P.C.:-

Heard Mr. S. G. Bhobe, the learned Counsel on behalf of the applicant/complainant.

The complainant has invoked extraordinary jurisdiction of this Court under Section 482 and revisional jurisdiction under Section 397 r/w Section 401 of the Code of Criminal Procedure, 1973(Code, for short) to assail the Order dated 27-4-2006 of the learned J.M.F.C., Mapusa on the ground that the sentence imposed/compensation ordered to be paid by the accused is inadequate. It is well settled that inherent powers under Section 482 of the Code can be exercised only when no other remedy is available to a litigant and not where a specific remedy is provided for. In the case at hand, the applicant has revisional remedy to assail the said order. Section 397 of the Code confers revisional jurisdiction on the Court of Sessions as well as on this Court. As held by this Court in Jeetendra R. Deshprabhu v. Laxmikant Yeshwant Parshekar and others by Order dated 23-12-2004 in Criminal Revision Application No.28/2004, it is the choice of the superior Court whether a revision petition can be entertained by it or not by allowing the party to bye-pass the inferior Court. In view of the above, Mr.Bhobe, the learned Counsel

on behalf of the applicant/complainant seeks leave to withdraw the petition in order to file the same as a revision petition before the Court of Sessions, Panaji. In view of the above, the petition shall be returned to the applicant/complainant to be presented before the Court of Sessions, Panaji within a period of two weeks from today. The learned Sessions Judge, Panaji is directed to treat the petition as an application for revision and decide the same in accordance with law. The certified copy of the judgment of the learned J.M.F.C. be also returned to the applicant/complainant on condition that the same is replaced by a xerox copy.

N. A. BRITTO, J.

RD.